

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's)	
Rules to Ensure Compatibility)	CC Docket No. 94-102
with Enhanced 911 Emergency)	
Calling Systems)	
)	

COMMENTS OF AT&T WIRELESS SERVICES, INC.

Pursuant to the Public Notice released July 30, 2001,^{1/} AT&T Wireless Services, Inc. ("AWS") hereby submits its comments in support of the petition for waiver of the Phase II E911 rules filed by Qwest Wireless, LLC and TW Wireless, LLC (collectively "Qwest").^{2/} Grant of a waiver is necessary because Qwest, largely as a result of factors beyond its control, will not be able to comply with the Commission's Phase II deadlines. Qwest, like many other wireless carriers including AWS, has determined that Phase II deployment consistent with the Commission's timelines is nearly impossible given the current state of Phase II location-information technologies. Given the lack of any "proven" network-based Phase II solution at this time, denying Qwest's waiver request would have no public interest benefit. Qwest's waiver request also underscores the problems that carriers face if they rely upon vendor claims about the availability and accuracy of their solutions, and demonstrates that the Commission should not rely on similar claims as it evaluates requests for waiver of its Phase II E911 rules.

^{1/} See Public Notice, WTB Seeks Comment on Wireless E911 Phase II Waiver Request Filed by Qwest Wireless, LLC and TW Wireless, LLC, CC Docket No. 94-102 (rel. July 30, 2001).

DISCUSSION

Generally, the Commission's rules may be waived when there is good cause shown and when "special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."^{3/} In the context of the Phase II E911 rules, the Commission has recognized that there may be instances where "technology-related issues" or "exceptional circumstances" make it impossible for a wireless carrier to deploy Phase II by October 1, 2001, and individual waivers could be granted in these circumstances.^{4/} The Commission indicated that a request for such a waiver of the Phase II implementation rules should be "specific, focused and limited in scope, and with a clear path to full compliance."^{5/}

Applying these standards, the Commission granted a Phase II waiver to VoiceStream Wireless. The Commission found that VoiceStream's proposal could offer "significant public safety benefits" by immediately providing a level of accuracy and reliability greater than that provided under Phase I, while also ensuring the rapid initial deployment of ALI capability, with a relatively brief transition to even more precise levels of accuracy.^{6/} The Commission also found that VoiceStream had satisfied the "special circumstances" requirement because the Network Software Solution/Enhanced Observed Time Difference of Arrival ("NSS/E-OTD")

^{2/} Qwest Wireless, LLC and TW Wireless, LLC Petition for Extension of Time or Waiver of Section 20.18 of the Rules, filed July 23, 2001 ("Qwest Petition").

^{3/} Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442 at ¶ 43 (rel. Sept. 8, 2000) ("Fourth MO&O") (citing Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

^{4/} Id. at ¶ 43.

^{5/} Id. at ¶ 44.

^{6/} Id. at ¶¶ 57-60.

approach it proposed to use “may be the only ALI solution available in the near term for GSM carriers.”^{7/}

Qwest now makes an equally compelling case for a waiver of the Phase II E-911 rules. Specifically, Qwest requests a limited waiver of the Phase II E911 rules to permit it to deploy a hybrid A-GPS solution for its CDMA network on a timeline different than that required by the Commission’s rules.^{8/} Like VoiceStream, Qwest has provided a detailed explanation of the technological and special circumstances that support its waiver request.

As Qwest explains, it originally decided to pursue a network-based solution in reliance upon “the representations of network-based solution vendors regarding the projected availability and suitability of their products.”^{9/} Because handset-based vendors declined to make similar commitments about their ability to provide a solution that would satisfy the Commission’s rules, Qwest felt compelled to use a network-based solution by “default.”^{10/} Qwest expended significant time and resources pursuing a network-based solution, but vendors were unwilling to conduct live testing on Qwest’s CDMA network.^{11/} Once Qwest separated “the vendors’ technical competence ‘wheat’ from their “marketing ‘chaff,’” it learned that products and capabilities were still in pre-production design stages and that it would have to fund deployment prototypes and commit to contracts for as-of-yet unproven technology.^{12/} Network-based vendors also refused to provide test information from trials previously conducted with other

^{7/} Id. at ¶ 56.

^{8/} Qwest Petition at 1.

^{9/} Id. at 3. Qwest notes that it encountered vendor “puffery” and “unfounded or inaccurate” claims about deployment capability from the vendors of AGPS solutions as well. Id. at 33.

^{10/} Id.

^{11/} Id. at 4, 21-22, 26, 32.

^{12/} Id. at 9.

carriers, which left Qwest without the information it needed to continue to pursue a network-based Phase II solution.^{13/}

Qwest explains that it also learned, like AWS, that if it deployed a network-based solution, substantial delays would be a certainty.^{14/} Implementing a network-based solution in the areas Qwest serves, which are substantially rural and suburban, would require the deployment of additional “E911-only” antenna sites that would be subject to site leasing and zoning difficulties.^{15/} According to Qwest, ubiquitous deployment of a network-based solution would not be feasible in some areas until 2003, particularly where site lease renegotiations and zoning approvals are required.^{16/} Given the lack of evidence that a network-based solution would work in Qwest’s CDMA network by October 1, 2001, and based upon the results of Qwest’s own research and trials, Qwest determined that a hybrid A-GPS location solution was the only viable option for achieving full compliance with the Commission’s Phase II E911 rules in a relatively short period of time.^{17/}

In order to deploy an A-GPS solution, however, Qwest will require a waiver of the Commission’s Phase II E911 deadlines. Qwest’s hybrid solution incorporates a network component, but Qwest’s network vendors, Lucent and Nortel, cannot provide the requisite E911 Phase II equipment by the Commission’s Phase II deadlines.^{18/} In addition, Qwest’s handset vendors, Kyocera and Samsung, likely will not be able to deliver location-capable handsets in

^{13/} Id. at 22, 33.

^{14/} Id. at 28-30. See also AT&T Waiver Request at 13 (detailing substantial delays that result from use of a network-based solution).

^{15/} Id. at 11, 27.

^{16/} Id. at 28.

^{17/} Id. at 19.

^{18/} Id. at 5, 15.

sufficient time, requiring Qwest to seek a limited waiver of the initial handset deployment requirements.^{19/}

Qwest nevertheless has provided a clear path to full compliance with the Commission's rules. In markets served by Lucent switches, Qwest expects to be able to provide commercial Phase II E911 service by the end of 2001.^{20/} In markets served by Nortel switches, Qwest anticipates offering Phase II E911 service sometime in Third Quarter 2002.^{21/} While the Lucent and Nortel switches are being upgraded, Qwest will be moving forward with other components of Phase II implementation, so that Qwest will be "prepared to go" as soon as those switch upgrades are completed.^{22/} Qwest also proposes to begin selling and activating location-capable handsets by December 31, 2001, and to ensure that at least 25 percent of all new handsets activated are location-capable by March 31, 2002, 50 percent of all new handsets activated are location-capable by December 31, 2002, and 100 percent of all new handsets activated are location-capable by March 31, 2003.^{23/} Qwest does not anticipate needing relief from the December 31, 2005 penetration requirement.^{24/}

The public benefits of granting Qwest's waiver request are clear. Qwest's A-GPS location solution will promote public safety by allowing it to provide more accurate location information to PSAPs than would be possible using the network-based solutions Qwest

^{19/} Id. at 18.

^{20/} Id. at 5, 16.

^{21/} Id.

^{22/} Id.

^{23/} Id. at 4, 17.

^{24/} Id.

pursued.^{25/} Qwest's A-GPS solution also will comply with the Commission's accuracy requirements in all of Qwest's service areas, including rural and suburban areas.^{26/} The hybrid A-GPS solution also eliminates the need for additional antennas at cell sites, avoiding the delays associated with site leasing and zoning difficulties.^{27/} Qwest's A-GPS solution also enables more rapid Phase II deployment generally, and quicker responses to specific PSAP requests.^{28/}

As Qwest explains, it would have required a waiver of the Commission's Phase II rules and deadlines even if it had continued to pursue a network-based solution.^{29/} Qwest therefore confirms what AWS has learned from its numerous trials and investigations, "no Phase II solution -- be it network-based, handset, or hybrid -- will be capable of achieving total compliance with the Commission's E911 Phase II rules by October, 2001."^{30/} As Qwest notes, the Commission's rules reflect "overly-optimistic projections by vendors of all kinds regarding the availability of technical solutions," and the Commission should now "modestly bend" those rules "to allow for limited waivers based on the reality of product availability and suitability."^{31/}

CONCLUSION

Because Qwest has demonstrated exceptional circumstances that satisfy the requirements for a waiver of the Phase II E911 implementation rules, its request for waiver should be granted.

^{25/} Id. at 11, 13.

^{26/} Id. at 6, 11.

^{27/} Id. at 14.

^{28/} Id.

^{29/} Id. at 8, 15.

^{30/} Id.

^{31/} Id. at 9, 33-34.

Respectfully submitted,

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